

EXHIBIT 9

TO PLAINTIFF'S STATEMENT OF UNDISPUTED MATERIAL
FACTS IN SUPPORT OF ITS MOTION FOR SUMMARY
JUDGMENT AGAINST DEFENDANT ERIC MONCADA

1 IN THE UNITED STATES DISTRICT COURT

2 FOR THE SOUTHERN DISTRICT OF NEW YORK

3 UNITED STATES COMMODITY)
 FUTURES TRADING)
 COMMISSION,)

5 Plaintiff,)
)

6 vs.) No. 12-cv-8791 (CM)
) (GWG)

7 ERIC MONCADA; BES)
 CAPITAL LLC; and)
 SERDIKA LLC,)

9 Defendants.)
)

10 The deposition of STEVEN E. WOLLACK, ESQ.,
 11 called for examination pursuant to the Rules of
 12 Civil Procedure for the United States District
 13 Courts pertaining to the taking of depositions,
 14 taken before JENNIFER M. DALY, a Certified Shorthand
 15 Reporter, within and for the County of Cook and
 16 State of Illinois, at 525 West Monroe Street,
 17 Suite 1100, Chicago, Illinois, on the 2nd day of
 18 December, 2013, at the hour of 8:07 o'clock a.m.

24
 Wollack, Steven

APPEARANCES:

COMMODITY FUTURES TRADING COMMISSION

BY: MR. ANDREW RIDENOUR, ESQ.

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On behalf of the Plaintiff;

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On behalf of the Defendants.

REPORTED BY: JENNIFER M. DALY, RPR, CSR, CCR

LICENSE NO.: 084-004688

I N D E X

WITNESS: STEVEN E. WOLLACK, ESQ.

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1 BY MR. RIDENOUR:

2 Q. Are you providing -- is your expert
3 testimony based on an analysis of data?

4 A. Partially, yes.

5 Q. Do you have a background analyzing
6 trading data?

7 A. A general background in the course of my
8 experience as a trader as a member -- as a chairman
9 of the disciplinary committees, do I sit there and
10 analyze data the same way as a market regulation
11 person would who's an auditor, no, but in terms of a
12 general oversight, a general looking at data, yes,
13 I've done that.

14 Q. Mr. Wollack, the document that we've
15 marked as Exhibit 2, the document doesn't have page
16 numbers on it?

17 A. Correct.

18 Q. Can we agree to start marking pages
19 starting on the page with the header,
20 "Qualifications as an Expert" as page 1?

21 MR. ASCHE: Yes.

22 THE WITNESS: Yes.

23 BY MR. RIDENOUR:

24 Q. Okay. Could you, I guess, just go ahead

1 me no. And I relied on that.

2 Q. What did Mr. Moncada tell you he used to
3 cancel -- to enter and cancel his orders?

4 A. He said he did it manually.

5 Q. And that conversation was either
6 July 11th or July 25th?

7 A. Correct. I assume it was one of those.

8 Q. What else did you discuss with
9 Mr. Moncada on July 11th?

10 A. Only in his assistance in getting me
11 data for the -- certain of the trade dates that were
12 in question that I didn't have and didn't have a
13 chance to review and so forth.

14 Q. What else did you discuss with
15 Mr. Moncada on July 25th?

16 A. That would, basically, be it. Most of
17 my substantive conversations were with Mr. Asche.

18 Q. Other than asking for Mr. Moncada's
19 assistance in getting data and the question as to
20 whether or not he was using high-frequency trading
21 algorithm, what other topics did you discuss with
22 Mr. Moncada?

23 A. I may have -- I think I may have asked
24 him whether or not he had any particular trading

1 those days?

2 A. I did ask him which trades the CFTC was
3 specifically looking at, and he, quite honestly,
4 didn't seem to know.

5 Q. For the eight days charged in the
6 Complaint, was that your only discussion with
7 Mr. Moncada about trading on those eight days?

8 A. I believe so.

9 Q. Mr. Wollack, I'd like to ask you a few
10 questions about your general experience looking at
11 trading data.

12 Have you ever had any experience doing
13 statistical analysis of trade data?

14 A. No.

15 Q. Earlier you had mentioned that in the
16 context of Business Conduct Committee proceedings at
17 the CME that you had looked at time and sales data.
18 When you looked at those time and sales data, what
19 were you looking for?

20 A. We were looking for whether the trades
21 could have occurred when people said they occurred.

22 Q. Those time and sales data, did those
23 relate to pit trades?

24 A. Back then, yes.

1 Q. So, those time and sales data did not
2 relate to electronic trading?

3 A. There was not electronic trading in
4 those days to speak of.

5 Q. Prior to your retention in this case,
6 had you ever reviewed trade data of an -- and aside
7 from your review of time and sales data at Business
8 Conduct Committee proceedings, had you reviewed
9 trading data of the sort that was produced to you by
10 Mr. Asche?

11 A. No, except I have reviewed daily and
12 monthly statements before, but not the other data
13 which showed the -- all the trades of all the
14 various traders and what orders they entered, what
15 orders they canceled, et cetera.

16 Q. And the daily and monthly statements
17 wouldn't include times the trades were executed,
18 correct?

19 A. Correct, it wouldn't.

20 Q. Mr. Wollack, if I can point you back to
21 your report, which we've marked as Exhibit 2, in the
22 second paragraph on Page 2 of your report, you refer
23 to "Moncada's trading style."

24 A. Mm-hmm.

1 Q. -- and carried overnight positions.

2 Did you review the data to determine
3 what other market participants were doing in terms
4 of their trading style?

5 A. No, I did not.

6 I mean, I was aware from -- is it
7 Mr. Bessembinder?

8 Q. Bessembinder?

9 A. That Mr. Moncada's trades, percentage of
10 large orders vis-a-vis others, that I accepted his
11 data. I didn't go and review the other traders and
12 what they did with their large orders and how many
13 trades they made and so forth.

14 Q. Looking over to page 3 of your report
15 marked as Exhibit 2, in the first paragraph, about
16 halfway down the first paragraph you say, "In most
17 cases he was adding to an existing position."

18 Do you see that?

19 A. The first full paragraph or the partial
20 at the top?

21 Q. The first partial paragraph.

22 A. Yes.

23 Q. What do you mean by, "In most cases"?

24 A. Well, on the -- on the dates in

1 Q. You said that you didn't see any spikes
2 of such as a five cent move in 30 seconds to a
3 minute after the large lot order. Did you do any
4 analysis of trade data to determine what price
5 movements did occur following the 710 large lot
6 orders Moncada placed on the eight days charged in
7 the Complaint?

8 A. No, I did not.

9 Q. Did you --

10 A. I found -- I did look at Bessembinder's
11 report, and his data seemed to support my opinion,
12 although he reached a different conclusion.

13 Q. By saying that his data supports your
14 opinion, what do you mean? What data --

15 A. I think he -- I think somewhere in his
16 report, if my recollection is correct, he said the
17 result of these large orders would increase the
18 bid-ask by one-tenth of one cent, or something,
19 which is less than the -- a one-quarter tick.

20 In other words, it didn't move the
21 market, and he says this is a result, this becomes a
22 result of excessive market movement. And it just
23 isn't there. The data's not there. The market
24 never moved.

1 He makes a statement. I could look at
2 it in his report, but . . .

3 Q. Did you conduct any analysis of trade
4 data for time periods when Moncada was not placing
5 large lot orders to determine what average price
6 movement is in the CBOT wheat futures market?

7 A. No, I just basically looked at the time
8 and sales and looked to see whether the market
9 during the day was moving in one-quarter tick
10 increments in which case it was doing so almost all
11 the time.

12 Q. So you just eyeballed the time and
13 sales?

14 A. Yeah, I looked down, but I didn't do
15 a -- any kind of detailed analysis.

16 Q. Looking back --

17 A. I did look at time and sales in relation
18 to some of his large lot orders that were entered
19 into the market to see whether that had an affect of
20 having the market run or not, and you know --

21 Q. By "market run," what do you mean?

22 A. Puts in an order to buy a large lot at
23 534 and a quarter, and I looked to see what the next
24 trades were, and it was 531 and a half, 531 and a

1 see where the large orders moved the market. The
2 market seemed to be orderly trading in one-quarter
3 tick minimum increments.

4 What I was referring to here is that
5 somebody who trades a given market, in this case the
6 wheat market, if he's watching the market and he
7 sees all of a sudden the bids increase dramatically
8 and then decrease and increase and decrease, he's
9 going to see they're frequent cancellations, and he
10 will realize -- if he's an experienced trader, he'll
11 realize what's happening, that somebody's, you know,
12 doing this. It could be a high frequency trader or
13 not.

14 Q. Did you analyze the data to determine
15 if, in fact, other traders were reacting to
16 Moncada's large orders and cancellations?

17 A. No, I did not.

18 MR. ASCHE: Well, other than --

19 BY MR. RIDENOUR:

20 Q. Have you ever --

21 MR. ASCHE: -- what he testified
22 before that he saw that the market didn't go up
23 or down more than one-quarter tick.

24 MR. McCracken: The testimony speaks

UNITED STATES COMMODITY FUTURES TRADING COMMISSION vs. ERIC MONCADA
Steven Wollack on 12/02/2013

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1 STATE OF ILLINOIS)
2) SS:
3 COUNTY OF C O O K)
4

5 I, JENNIFER M. DALY, a certified shorthand
6 reporter within and for the County of Cook and State
7 of Illinois, do hereby certify that heretofore,
8 to-wit, December 2, 2013, personally appeared before
9 me, at 525 West Monroe Street, Suite 1100, Chicago,
10 Illinois, STEVEN E. WOLLACK, ESQ., in a cause now
11 pending and undetermined in the Circuit Court of
12 Cook County, Illinois, wherein COMMODITY FUTURES
13 TRADING COMMISSION is the Plaintiff, and ERIC
14 MONCADA; BES CAPITAL LLC; AND SERDIKA LLC, are the
15 Defendants.

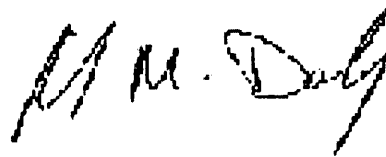
16 I further certify that the said STEVEN E.
17 WOLLACK, ESQ. was first duly sworn to testify the
18 truth, the whole truth and nothing but the truth in
19 the cause aforesaid; that the testimony then given
20 by said witness was reported stenographically by me
21 in the presence of the said witness, and afterwards
22 reduced to typewriting by Computer-Aided
23 Transcription, and the foregoing is a true and
24 correct transcript of the testimony so given by said

1 witness as aforesaid.

2 I further certify that the taking of this
3 deposition was pursuant to notice and that there
4 were present at the deposition the attorneys
5 hereinbefore mentioned.

6 I further certify that I am not counsel for
7 nor in any way related to the parties to this suit,
8 nor am I in any way interested in the outcome
9 thereof.

10 IN TESTIMONY WHEREOF: I have hereunto set
11 my hand and affixed my seal this 3rd day of
12 December, 2013.

13
14 
15

16
17 _____
JENNIFER M. DALY, RPR, CSR, CCR
18 LIC. NO. 084-004688
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